

## Innocence commission debated in Texas

Debate that began during the last legislative session about whether Texas should create an innocence commission has continued during the interim, including at a Capitol forum in May. The forum, hosted by Sen. Rodney Ellis, focused on preventing wrongful criminal convictions. During the 2007 regular session, the Senate passed SB 263 by Ellis, which would have created an innocence commission to investigate post-conviction exonerations, but the bill died in a House committee.

The scope and duties of innocence commissions varies in states across the country. Some study wrongful convictions and recommend changes in law and procedure, and some examine individual claims of innocence and advance those found to be meritorious. A common characteristic of innocence commissions is investigating findings that arise from individual cases.

Although Texas does not have an innocence commission, the state funds projects at public law schools that examine individual claims of innocence and several state entities have studied the criminal justice system. One such group recently was formed by the Court of Criminal Appeals. In June, Judge Barbara Hervey announced the creation of the Texas Criminal Justice Integrity Unit to “address growing concerns with

our criminal justice system.” (*For more information, see page 7.*)

### Other states

Several states have formed innocence commissions or criminal justice reform commissions, although their structure and duties vary. California, Connecticut, Illinois, North Carolina, Pennsylvania, and Wisconsin have established commissions, and other states are

considering doing so, according to the Innocence Project, an organization involved in exonerating the wrongfully convicted.

In general, these commissions are charged with studying the causes of wrongful convictions, and at least one state has established an entity to review individual claims of innocence. Some commissions were established through legislation, while

*(See Innocence, page 2)*

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## Universal telephone service funds to major telecoms to be reduced

The amount of money that four of the largest telecommunication companies in the state receive from the Texas Universal Service Fund (TUSF) to subsidize telephone service to certain high-cost and rural areas of Texas will be reduced over a four-year period, based on an order of the Public Utility Commission of Texas (PUC). The reductions, which should be passed on to most consumers through lower assessments on their phone bills, followed a study of the TUSF by the PUC and were called for in SB 5 by Fraser, enacted by the 79th Legislature in its second called session in 2005. The PUC’s study addressed the need to more accurately account for the changing costs of providing service to hard-to-serve locations in light of technological advances and deregulation. Those consumers currently benefiting from universal service subsidies may see an increase in basic phone service fees.

Total payments to large telephone carriers will be reduced by about \$63.3 million on January 1, 2009. After all reductions are phased in, the total payments will be \$144.35 million less than the \$395 million that

*(See Universal service, page 8)*

### ***Innocence commission, page 2***

others were created by other state leaders, including governors and chief justices.

#### *North Carolina*

The North Carolina Innocence Inquiry Commission was created by the North Carolina legislature in 2006. Its duties include providing an independent, balanced forum to investigate claims of actual innocence. The chief justice of the North Carolina Supreme Court and the chief judge of the Court of Appeals appoint for three-year terms the commission's eight members: a superior court judge, a prosecuting attorney, a criminal defense attorney, a sheriff, a victims' rights advocate, a member of the public, and two discretionary appointments.

The inquiry commission investigates cases in which there is new evidence of factual innocence that was not considered at trial. Of the 243 claims the commission has received, one is in the hearing stage, three are in the investigation stage, 149 are under a preliminary review, and 90 have been rejected, according to the commission's website. The commission's website is [www.innocencecommission-nc.gov](http://www.innocencecommission-nc.gov).

The North Carolina Innocence Inquiry Commission was created on the recommendation of a commission established by the North Carolina Supreme Court in 2002. That court-established commission, the North Carolina Actual Innocence Commission, was created to provide a forum to examine common causes of wrongful convictions and to develop procedures to decrease the chance of such convictions. Its 30 members, representing those involved in the criminal justice system, are appointed by the chief justice.

#### *California*

The California Commission on the Fair Administration of Justice was created by a California state Senate resolution in 2004. It is charged with examining the causes of wrongful convictions

and making recommendations to ensure that the administration of criminal justice in California is just, fair, and accurate, according to its website. Members are appointed by the Senate Committee on Rules. The commission has produced several reports, supported legislation in 2006 and 2007, and is scheduled to make additional recommendations to the California legislature and governor by June 30, 2008. The commission's website is [www.ccfaj.org/index.html](http://www.ccfaj.org/index.html).

#### *Illinois*

One of the best-known criminal justice reform commissions was created in 2000 by Illinois Gov. George Ryan, who established the Governor's Commission on Capital Punishment. It studied the capital punishment process in Illinois to determine why death sentences

had been imposed on people who were later discovered to be innocent, and it made recommendations to ensure the application and administration of the death penalty in Illinois was just, fair, and accurate. The governor appointed the 14-member commission, which issued a report in 2002 with 85

recommendations for changes in the capital punishment system in Illinois.

The recommendations covered all phases of the system, including investigation, trial, and post-trial. For example, the commission recommended that when a jury imposed a death sentence, the trial judge be required to concur with the determination or else sentence the defendant to life without parole, and that the Illinois Supreme Court review each death sentence to ensure both the evidence and the offense warranted a death sentence in light of other death sentences imposed in the state. Neither of these proposals was implemented.

Gov. Ryan declared a moratorium on executions while the commission prepared its report, and in 2003, he commuted the sentences of all of the inmates on Illinois' death row, almost all to life in prison. Also in 2003, the Illinois legislature revised the state's death penalty statutes. With some exceptions, Illinois now requires that in potential capital cases, suspects being questioned

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in police custody be recorded electronically from the initial *Miranda* warning and that unrecorded statements be presumed inadmissible. The Illinois legislature also created the Capital Punishment Reform Study Committee to study the reforms to the Illinois capital punishment system that were adopted or proposed by the commission.

### Innocence projects at Texas universities

Innocence commissions differ from innocence projects. Innocence projects often are run out of law schools or other university programs, such as journalism classes, and investigate claims of innocence made by those who say they have been wrongfully convicted. Although they set different criteria for accepting a case, in general, if an innocence project finds a request shows a potentially provable case of actual innocence, it may work through the court or clemency system to pursue remedies.

The state of Texas funds law school innocence projects at the University of Houston, the University of Texas at Austin, Texas Tech University, and Texas Southern University. Through the Office of Court Administration, each of these projects received \$200,000 for fiscal 2008-09. Statistics about the workload of these projects can be found at: <http://innocence.tamu.edu/Public>. Students at other law schools and in other university programs and classes also examine claims of innocence and often work with the students at the state-funded projects.

Together, three state-funded projects received almost 3,000 requests for assistance in fiscal 2007, with only a handful of those being pursued. For example, the University of Texas project received and processed 707 requests, of which 14 underwent further investigation. Of those 14 cases, six ultimately were rejected, seven were under review at the end of the fiscal year, and one had been accepted to pursue. The innocence project at Texas Southern University began in June 2007 and in the first few months it operated during fiscal 2007 received 17 requests for assistance. Students in these innocence projects have been involved in several exonerations, including that of Josiah Sutton. Sutton served five years of a rape sentence before being released in 2003, then pardoned in 2004 based on his innocence.

### Structure and power of commissions

Bills introduced in the last three Texas legislative sessions would have created an entity, such as an innocence commission, to look at post-conviction exonerations in Texas. Details about the structure and power of such a commission have been part of the debate. For some, their support for the creation of an innocence commission depends on how these issues are decided.

Key questions in the debate include:

- whether the commission would be established by legislation, executive order, or some other means;
- who would appoint members of the commission;
- what would be the composition of the commission, including whether it would include experts from all parts of the criminal justice system;
- what would be the duties of the commission – whether it would investigate findings that arise from cases only after exoneration, study the criminal justice system as a whole, or advance individual claims of innocence, and the standards it would use to select cases;
- what would be the powers of the commission and whether those would extend beyond making recommendations;
- how much independence the commission would have to investigate and advance cases at its own discretion;
- how much, if any, authority the commission would have to order investigatory findings, such as new forensic testing;
- whether the commission could subpoena documents, compel witnesses, or bring civil action against those who obstructed its work;
- whether the findings and recommendations would be binding evidence in civil or criminal court proceedings;
- how the commission would be made accountable to the public; and
- how much funding the commission would receive.

## Proposal considered by the 80th Legislature

In 2007, SB 263 by Ellis would have created a Texas Innocence Commission. The bill was approved by the Senate, but died in the House Criminal Jurisprudence Committee. As passed by the Senate, SB 263 would have created a commission to investigate each post-conviction exoneration to:

- discover errors and defects in the criminal procedures used in the case;
- identify errors and defects in the criminal justice process;
- develop solutions and methods to correct the errors and defects; and
- identify procedures and programs to prevent future wrongful convictions.

The commission would have had nine members serving two-year terms, as follows:

- two appointed by the governor, including the dean of a law school and a law enforcement officer;
- one appointed by the lieutenant governor;
- one appointed by the speaker of the House;
- one judge appointed by the presiding judge of the Court of Criminal Appeals;
- one professional in forensic science, appointed by the presiding officer of the Texas Forensic Science Commission;
- one prosecutor, appointed by the Texas District and County Attorneys Association;
- one criminal defense lawyer, appointed by the Texas Criminal Defense Lawyers Association; and
- one attorney representing an innocence project, appointed on a rotating basis by the University of Texas School of Law, the University of Houston Law Center, and the Texas Tech University School of Law.

The commission would have been required to report its findings and recommendations to the governor, the lieutenant governor, and the speaker. The report would

have been made available to the public on request, and the findings and recommendations could not have been used as binding evidence in a subsequent civil or criminal proceeding.

## Should Texas have an innocence commission to examine exonerations?

The prospect of an innocence commission in Texas has received both support and criticism. Chief Justice Wallace Jefferson of the Supreme Court of Texas has endorsed the idea of a commission to examine erroneous convictions for commonalities and probable sources of error. Justice Jefferson said in a newspaper editorial

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published in January 2008 that he supports a commission limited to cases in which there already has been an exoneration, so that it need not conflict with the court system, which should remain the appropriate venue for individual claims of innocence. Presiding Judge Sharon Keller of the Court

of Criminal Appeals has said that she is interested in trying to find out why wrongful convictions occur. Gov. Rick Perry has said that rather than creating another bureaucracy that's "all bark and no bite," he supports fixing shortfalls that might occur at the front end of the criminal justice system before an innocent person ever receives an erroneous sentence.

The debate in Texas generally has revolved around creating a commission that would study cases after an exoneration, not one that would examine claims of innocence and advance some of those claims to try to achieve an exoneration. The following debate centers on the first type of proposal: whether Texas should create an innocence commission to study individual cases after an exoneration.

**Supporters of creating an innocence commission to investigate post-conviction exonerations** say it is necessary to address the state's problem of wrongful criminal convictions. The wrongful conviction and imprisonment of any innocent person is a miscarriage of justice that carries with it a moral obligation to prevent additional miscarriages of justice. In Texas, DNA testing

has been used to exonerate at least 33 men, according to The Justice Project, an organization that tracks exonerations and works for changes in the criminal justice system. Many of these inmates served decades in prison before being exonerated. Several inmates also have had their wrongful convictions overturned on other grounds, including eight Texas death row inmates exonerated and released in cases that did not involve DNA testing. Investigations by journalists and others have identified at least three cases in which it was suggested that Texas may have executed an innocent man. Similar cases abound in other states.

An innocence commission could investigate cases in which people were wrongfully convicted, help identify what went wrong and why, examine the criminal justice system as a whole, and recommend changes to prevent wrongful convictions in the future. Such a commission would not erode the authority of the courts because it could examine a case only after an exoneration had been achieved. While certain facets of the criminal justice system, such as indigent defense and post-conviction DNA testing procedures, have been reformed in recent years, an innocence commission may be able to identify additional needed changes.

An innocence commission could help ensure public safety and confidence in the criminal justice system. A wrongful conviction may mean that a guilty person remained undetected and unpunished and could commit more crimes. An innocence commission could investigate cases similar to the way a national safety board investigates transportation accidents.

The Legislature needs to create a state entity to examine exonerations and recommend systemic changes because now there is no adequate mechanism for doing so. While other bodies may recommend changes to criminal justice procedures, an innocence commission could do so based on findings from actual cases. The growing number of exonerations in Texas shows that while some individuals may be exonerated through the court or clemency system, this does not necessarily result in the criminal justice system as a whole being examined or changed. Innocence projects, such as those at some Texas law schools, focus on individual cases and should not be depended on to examine systemic issues. A legislatively created entity would express the will of the

Legislature that certain problems be addressed, put the authority of the state behind its actions, be directly tied to lawmakers with power to make changes, and make the body more accountable to the public through legislative oversight.

Fears that an innocence commission would erode support for the death penalty are unfounded. The commission could include representatives from all parts of the criminal justice system and have rules to ensure evenhandedness. For example, the Legislature could prohibit the commission's work from being used as evidence in a criminal or civil proceeding for a person who was part of a wrongful conviction and could decide whether the commission would have subpoena power or any other authority. The Legislature would have oversight of the commission and the power to revise or eliminate it.

The commission's small size, limited mission, and legislative oversight could help ensure that it did not become an unwieldy bureaucracy. A commission could save the state money if it reduced state awards for wrongful convictions, which have totaled \$8.6 million to 45 people since 2001.

**Opponents of creating an innocence commission to investigate post-conviction exonerations** say it is unnecessary to create one in Texas because the criminal justice and legislative systems in the state have checks and balances that work to achieve justice and to identify and address problems. The state should let the court and clemency systems handle individual cases of alleged innocence without creating an entity outside the traditional jurisprudence system, which has served the state well.

It is unfair to use cases that may be decades old to argue for an innocence commission. In the past two-and-a-half decades, the state's criminal justice system has received numerous and substantial improvements, resulting in a just and fair system that protects the public. For example, the state's Fair Defense Act improved the system that provides attorneys for indigent criminal defendants, and the state now has a system of post-conviction DNA testing that allows defendants to get testing that was not available when they were convicted. The state should focus on preventing errors at the front end of the criminal justice system, such as with

eyewitness identification or witness interrogations, and on addressing deficiencies that may erode confidence in the system without spending resources to examine cases that relied on outdated procedures. Innocence commissions and transportation safety boards are not comparable because safety boards generally investigate accidents shortly after they occur, not decades later.

Studying post-conviction exonerations and the criminal justice process in Texas could be accomplished without creating a new governmental entity. An interim study could be conducted by a legislative committee, such as the Criminal Justice Legislative Oversight Committee created in 2007. The governor, the attorney general, or another state official could appoint a special committee to study the issue. The newly chartered group put together by the Court of Criminal Appeals will be doing just that, and it should be allowed to operate before considering creation of another new entity such as an innocence commission.

Any needed changes to the criminal justice system could be identified and addressed through means other than state entities. This could be done through the work of the innocence projects at the state's law schools, which already investigate alleged claims of innocence, or through efforts such as the one being made by Dallas County District Attorney Craig Watkins, who established a Conviction Integrity Unit to oversee the post-conviction review of about 400 cases involving DNA.

An innocence commission could be used as a back-door way to erode support for the death penalty in Texas. It would emphasize the relatively few mistakes – especially those from long ago – in a system for which rigorous standards are enforced and extensive opportunities for review afforded. It would create a bureaucracy biased toward eliminating the death penalty, focused only on negative aspects of criminal cases, and lacking the traditional adversarial process central to the criminal justice system. This could institutionalize opposition to the death penalty and allow public funds and the weight of the state to be used to further the political goal of eliminating capital punishment, an objective not shared by most Texans.

Creating an innocence commission would unnecessarily add to state bureaucracy. It could be hard

to abolish because governmental entities traditionally are difficult to eliminate and tend to grow in scope to justify their continued existence.

## Commissions that advance innocence claims

Proposals to create an entity like the one in North Carolina, which examines and advances individual cases of alleged innocence, also are being debated in many states.

**Supporters of innocence commissions that advance individual claims of innocence** argue that the increasing number of exonerations shows that the court and clemency systems cannot be relied upon as venues to address wrongful convictions. For example, they argue, court access for those seeking exoneration through a writ of *habeas corpus* often is too limited to rely on for advancing claims of innocence. Supporters also say that states cannot ensure justice and prevent wrongful convictions by depending on other facets of the criminal justice system, such as the indigent defense system or the post-conviction evidence testing. They also say the wrongfully convicted should have a statewide entity to turn to and not have to rely on efforts by individual local prosecutors, as in Dallas County, where the district attorney has a group reviewing about 400 post-conviction cases in which DNA is available to test.

**Opponents of innocence commissions that advance individual claims of innocence** argue that the court system is the most appropriate venue for such claims. By evaluating evidence and testimony within an adversarial system that presumes innocence and by providing appeals courts to review cases, courts remain the best place to examine innocence. For example, writs of *habeas corpus* can be used to develop and present newly discovered evidence of innocence. States also can increase support for innocence projects, which investigate claims of actual innocence in a cost-efficient way by involving law school students, or they can support other efforts, such as the Conviction Integrity Unit established in Dallas County.

- by Kellie Dworaczyk

## Proposals to change criminal procedures

The Texas Court of Criminal Appeals this month launched an effort to study certain criminal procedures and to “address growing concerns with our criminal justice system,” according to the court. Judge Barbara Hervey of the court said the newly created Texas Criminal Justice Integrity Unit will address these issues:

- improving the quality of defense counsel available for indigent defendants;
- implementing procedures to improve eyewitness identification;
- making recommendations to eliminate improper interrogations and to protect against false confessions;
- reforming the standards for collection, preservation, and storage of evidence;
- improving crime lab reliability;
- improving attorney practices and accountability;
- adequately compensating the wrongfully convicted;
- implementing writ training; and
- establishing local, “home rule” protocols for the prevention of wrongful convictions.

Judge Hervey named to the unit Sen. Rodney Ellis; Rep. Jim McReynolds; Judge Sid Harle, district judge; Mary Anne Wiley, deputy general counsel to Gov. Rick Perry; Bill Allison, director of the University of Texas’ criminal defense clinic; Pat Johnson, director of the Department of Public Safety’s crime lab; James McLaughlin, general counsel and executive director of the Texas Police Chief’s association; Craig Watkins, Dallas County District Attorney; Jaime Esparza, El Paso County District Attorney; and Jim Bethke, director of the Texas Task Force on Indigent Defense.

Some of the issues that will be addressed by the unit have been discussed in Texas before. For example, in January 2006, the Governor’s Criminal Justice Advisory Council recommended that a state pilot program be established to help identify best practices for eyewitness identification procedures and that Texas law enforcement agencies be surveyed to determine their procedures for interrogation and confession and identify possible changes.

Other proposals that some have suggested would prevent and address wrongful convictions include electronic recording of custodial interrogations; improving standards for the admissibility of “snitch” testimony; expanding discovery in criminal cases; improving forensic evidence-testing procedures; ensuring safeguards against attorney misconduct; better oversight of crime labs; and establishing regional crime labs. The Justice Project has advocated for many of these proposals, and details on its proposals can be found at: [www.thejusticeproject.org/national/solution](http://www.thejusticeproject.org/national/solution).

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these companies combined received in 2007. The four companies affected will be AT&T, Verizon, Embarq, and Windstream. The order will result in a 25 percent reduction in total disbursements from the TUSF.

**History of the TUSF**

Before the TUSF was established, phone-service providers operated under government regulation in exchange for being allowed to operate largely free from business competition, often as local monopolies. However, many phone companies still were not able to provide service profitably to all parts of Texas. Providing telephone service to rural or remote areas often is complicated by rough terrain and the difficulty of recovering costs from a smaller customer base. Previously, long-distance companies paid access charges to local phone companies for handling long-distance calls. This also helped subsidize local phone service, and long-distance companies passed the costs on to their customers.

The 70th Legislature established the TUSF in 1987 to fund three programs. It funded the Tel-Assistance program to provide discounted telephone service to low-income consumers and Relay Texas to provide sophisticated communication devices and operator

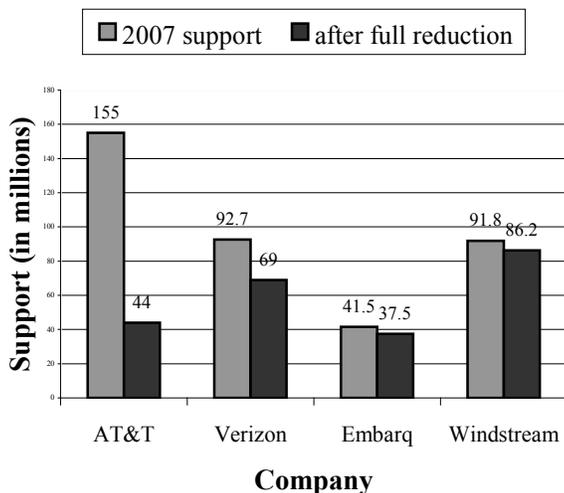
translations for the hearing- and speech-impaired to use telephone networks. In 1993, the TUSF began funding the High Cost Assistance Fund, which provided support to local phone service providers who were in the process of lowering rates.

In the mid-1990s, the federal government and state governments moved to open the phone service market to greater competition, with the goal of further driving down prices and encouraging innovation with additional services and technology. In 1995, the 74th Texas Legislature enacted HB 2128 by Seidlits, allowing telephone carriers that had been operating under publicly regulated price structures to compete in local markets with limited price flexibility. In 1996, Congress enacted the Telecommunications Act, which established universal service goals for affordability and availability within the framework of increasing competition in local markets. In 1999, the 76th Legislature enacted SB 560 by Sibley, which required phone companies to charge lower access rates for long-distance service. Increasing competition and price flexibility, along with changing guidelines for universal service, meant that the old mechanism for subsidizing local phone rates was diminished to the point that additional funds from another source would be needed to meet universal service goals.

In response, the PUC created several programs to enable telephone-service carriers to meet these goals. One of these programs, the Large Company Area High-Cost Program (LCAHCP), was established to enable large telephone-service carriers to receive TUSF funds for providing service to high-cost rural areas of Texas.

The cost of providing land-line phone service is affected by distance to existing telecommunication infrastructure, roughness of terrain, and density of customers. Rural areas often have rugged terrain that requires running wire over and around obstacles, such as densely forested areas, water, hills, or valleys. Rural areas also have fewer customers from which to recoup the cost of service. The LCAHCP provides assistance to large carriers that provide service in these areas to help those carriers offset the costs. However, the LCAHCP is not a simple cost-reimbursement program. Under the program, TUSF payments are made to participating carriers at a monthly rate determined by cost models and revenue benchmarks designed to recover costs and depreciation.

**TUSF Reductions**



Source for data: PUC

The TUSF is funded by a statewide assessment on phone service providers, including providers of land lines, cell phones, and cable telephony. Most carriers pass this cost on to their customers. TUSF funds are disbursed to carriers serving high-cost areas and low-income customers, as well as to programs that subsidize low-income customers and provide communication equipment for those who are hearing or speech impaired. More than 1,600 telecommunications providers pay into the TUSF, and AT&T, Verizon, Embarq, and Windstream provide 37 percent of the incoming assessment funds. As of fiscal year 2006, disbursements from the LCAHCP accounted for 75 percent of total disbursements from the TUSF. AT&T, Verizon, Embarq, and Windstream received about 80 percent of the TUSF's total disbursements. These four companies receive a disproportionate share of disbursements because they provide phone services to a larger percentage of the customers in these hard-to-serve areas. In effect, the larger companies receive subsidies from other telecommunication companies that do not serve customers in these areas.

### SB 5 study and recommendations

The 79th Legislature, during its second called session in 2005, enacted SB 5 by Fraser, which required the PUC to assess whether the TUSF's purposes had been achieved and whether it should be phased out. The report also was to recommend how TUSF money should be collected, disbursed, used, and accounted for. SB 5 allowed the PUC to make changes to the TUSF by rulemaking or contested case hearings after September 1, 2007.

In a January 2007 report, the PUC concluded that the LCAHCP was achieving its purpose of helping telecommunications providers provide basic phone service at reasonable rates in high-cost rural areas, primarily by maintaining existing prices. However, the PUC also questioned whether the current formulas and funding level were necessary to achieve reasonable rates and whether the historically low rates were necessary to achieve "reasonable" access to basic phone service.

### Suggested changes to the LCAHCP

For the SB 5 study, stakeholders submitted testimony and exhibits on the structure and effectiveness of the LCAHCP. Their proposed changes in the total amounts of support provided to large carriers ranged from increasing totals to \$755 million to reducing totals to \$132 million, both substantial departures from the 2007 total support amount of \$395 million.

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*SB 5 required the PUC to assess whether the TUSF's purposes had been achieved and whether it should be phased out.*

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Major carriers asked the PUC to increase what they received from the TUSF, saying it would better reflect what it costs to maintain existing infrastructure and amounts necessary to keep prices down.

Cable groups and the PUC staff suggested substantially or entirely cutting TUSF support to the large carriers. They argued that the program pays out substantially more than is needed to achieve its purpose, especially because there is no direct link between the subsidy provided and the rates consumers are charged in many markets for most services. Cable groups also have argued that the TUSF forces them to subsidize their competitors because the TUSF supports only traditional land-line phone companies.

Other groups argued that the TUSF payments are an artificial and needless interference in the telecom market and that greater deregulation and a freeing up of the phone service marketplace would result in greater access and lower prices. Still others questioned whether the fund had achieved its purpose, claiming it was difficult to determine what a reasonable rate was and why the program appears to have worked better in some areas than in others.

Rural interests expressed concern that changing the TUSF could negatively affect their telephone service rates and stifle business development due to increased costs. Many suggested that reducing TUSF funds could hinder investment in their areas by telecommunication companies. Some questioned whether reducing support to large carriers was the first step toward reductions for small and rural carriers and co-ops, although these groups are not explicitly affected by this order.

## Final Order

The SB 5 report and subsequent hearings resulted in a unanimous settlement agreement, approved by the PUC on April 25. The final order reduces both the number of phone lines eligible for support and the amount of the subsidy available for eligible phone lines. The lowered amounts will result in smaller payments to the large carriers and, on average, lower phone bills because of the smaller TUSF assessments on carriers, leading to less cost passed on to customers. In exchange for the subsidy reduction, the phone service providers will be allowed to increase the prices they charge local consumers for basic phone service. The parties have agreed that \$15.50 to \$17 a month is a reasonable rate for basic phone service. Some areas that now receive TUSF support have subsidized basic phone service rates as low as \$8.15 per month. Over the four-year period, the carriers each will be allowed to petition the PUC for rate increases of up to \$2 a year up to the reasonable rate ceiling. The carriers are not required to raise rates, but even if they do not, the payments they receive from the TUSF will be reduced over the four-year period.

The rate of the assessment applied to each carrier is set by the PUC after it evaluates various TUSF programs and their costs. The PUC order does not affect those rates, but estimates are for about a 25 percent reduction in the TUSF assessment that is passed on to consumers.

Cable groups have said they are pleased by what they see as a more level playing field, with all phone service providers being assessed less and the large carriers receiving a smaller subsidy. Large carriers have said they are pleased by the lower assessments, which will result in savings passed on to consumers. Rural groups have said they are pleased the program remains intact and still available to the hardest-to-serve areas. Advocates for low-income consumers point out that these consumers still are protected by other subsidy programs, such as Lifeline, which specifically targets low-income

### Who is bound by the PUC Order?

Several groups are bound by the order, including: Staff of the Public Utility Commission of Texas; Office of the Public Utility Commission of Texas; Sprint Communications; SprintCom; Sprint Spectrum; Nextel of Texas; NPCR; Time Warner Telecom of Texas; Time Warner Cable Information Services, TWC Digital Phone; USF Reform Coalition; Cumby Telephone Coop.; FEC Communications; Panhandle Telephone Coop.; Santa Rosa Telephone Coop.; W.T. Services; XIT Telecommunications and Technology; Rural Texas CLECs; Embarq; Verizon; Windstream; and AT&T Texas.

As part of the order, these groups have agreed not to support or pursue any Texas state legislation that would change or alter the agreement. The telecoms agree that they will not seek to force cable companies or VOIP companies (companies that provide phone service over the Internet) to provide Lifeline services for low-income individuals.

consumers by reducing their monthly phone rates. Also, regulated basic local residential rates have not increased since 1990. Adjusting for inflation would put the rate at \$17.85 in today's dollars, and the agreement holds the companies to maximum rates below that amount. Advocates say that while these customers may see rate increases, they at least have been shielded from the full effects of inflation.

- by Tom Howe



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